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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL
CATALDO, JULIAN
SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,
Defendant.

Case No.: 3:20-cv-04688-RS

**PLAINTIFFS' OPPOSITION TO
GOOGLE'S MIL NO. 4 RE: NON-U.S.
CONSUMER STUDIES AND SURVEYS**

The Honorable Richard Seeborg
Courtroom 3 – 17th Floor
Date: July 30, 2025
Time: 9:30 a.m.

I. INTRODUCTION

Google's motion focuses on four documents (PX-9, PX-14, PX-186, and PX-283) regarding Google's research into user sentiments regarding privacy and their expectations regarding the Web & App Activity ("(s)WAA") privacy controls. These documents include damning evidence and admissions. From one user study early in the class period, for example, Google concluded that [REDACTED]

[REDACTED] Santacana Ex. O (PX-14) at -706. Later on, another researcher [REDACTED]

[REDACTED] Santacana Ex. N (PX-9). These studies also showed that [REDACTED]

Google's motion to exclude this evidence completely misses the mark; Google's motion is an improper effort to bury bad evidence, not exclude inadmissible evidence. While Google cites Rule 702, it does not apply: these documents are not expert witness testimony. They are *Google's* studies (and admissions), conducted in the ordinary course of its business and turned over to satisfy ordinary discovery requests. Rule 403 also does not authorize exclusion because Google cannot identify prejudice substantially greater than these exhibits' significant probative value. While some, not all, of the surveyed users [REDACTED], Google itself relied on these surveys to [REDACTED]

[REDACTED] In any event, Google's criticisms go to the weight of this evidence, not its admissibility. There is no basis under Rule 403 or otherwise to exclude four identified exhibits or any other evidence or argument concerning Google's research regarding its users around the world. To the contrary, Google's veiled attempt to bury bad evidence shows how relevant it is.

II. LEGAL STANDARD

"To exclude evidence on a motion in limine, the evidence must be inadmissible on all potential grounds." *Thunder Studios, Inc. v. Kazal*, 2018 WL 11346849, at *1 (C.D. Cal. Nov. 13,

2018) (citation omitted). “Unless a party can meet this ‘high standard,’ evidentiary rulings should be deferred until trial because ‘a court is almost always better situated during the actual trial to assess the value and utility of the evidence.” *L.D. v. EzyRoller, LLC*, 2024 WL 5416670, at *1 (C.D. Cal. Nov. 25, 2024) (citation omitted). Moreover, Rule 403 “is an extraordinary remedy to be used sparingly.” *United States v. Mende*, 43 F.3d 1298, 1302 (9th Cir. 1995). Rule 403 authorizes exclusion when “the danger of prejudice [does] not merely outweigh the probative value of the evidence, but *substantially* outweigh[s] it.” *Id.* (emphasis in original).

III. ARGUMENT

The Court should deny Google’s motion. Google cites four exhibits (PX-9, PX-14, PX-186, and PX-283), each of which is highly relevant to the issues in dispute. These issues include users’ privacy expectations, Google’s failure to obtain permission or consent, Google’s culpable state of mind (e.g., how long Google knew that users were misled), and the offensiveness of Google’s conduct. Although some documents concern [REDACTED], that does not justify exclusion. They form part of [REDACTED]. [REDACTED]. If these studies were excluded, the jury would be left with an incomplete picture of Google’s [REDACTED]. At trial, Google may seek to elicit testimony [REDACTED]. But Google’s arguments provide no basis to exclude this highly relevant evidence.

Relevance. The four exhibits at issue (PX-9, 14, 186, 283) grew out of an internal Google program codenamed [REDACTED] which had a “mission [REDACTED]” [REDACTED] Santacana Ex. Q (PX-283) at -069. Although Google launched its [REDACTED] program in part due to the General Data Protection Regulation (GDPR) in Europe, Google also [REDACTED]. *Id.* Google employees involved with [REDACTED] recognized that [REDACTED]

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[REDACTED]

[REDACTED] *Id.* at -071. Google naturally focused on [REDACTED]

[REDACTED]. See Mao Ex. 5 (Miraglia Tr.) at 201:23–
202:6 ([REDACTED])

[REDACTED] see also Mao Ex. 6 (PX-33) (U.S.-based
Google engineer writing: [REDACTED])

[REDACTED]

In connection with [REDACTED] Google [REDACTED]

[REDACTED] Mao Ex. 7 (Fair Tr.) at 162:16–163:6 [REDACTED]

[REDACTED]

[REDACTED]; Mao Ex. 8 (Heft-Luthy Tr.) at 99:7–11 [REDACTED]

[REDACTED]

[REDACTED]. See Mao Ex. 9 (de Booij Tr.) at 80:25–82:4 9.

[REDACTED]

[REDACTED]. See, e.g., Mao Ex. 7 (Fair Tr.) at 162:21–
163:6 ([REDACTED]).

As reflected in the four exhibits identified in Google’s motion, this evidence is highly relevant:

PX-14 is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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PX-186 is

PX-283 is

1 PX-9 is [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] Plaintiffs filed this lawsuit less than a month later, and either the study was
14 not completed or Google did not produce the results.

15 This is damning evidence. That Google's research repeatedly showed that [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 Based on this and other evidence, the jury may conclude that Google's conduct was not only
20 intentional but especially offensive, given what its own research showed about user expectations.
21 The jury may also rely on this evidence to find that Plaintiffs' expectation of privacy was
22 reasonable and that Google did not obtain their consent or permission. The jury may be offended
23 by the fact that, by its own admission, [REDACTED]

24 [REDACTED]. The jury may also be offended by [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 **Prejudice.** Google cannot possibly meet the high burden necessary to exclude these
28 documents under Rule 403. Google's complaints regarding the survey population—in studies

Google itself commissioned—are not grounds for exclusion. There is nothing prejudicial about presenting evidence of Google’s internal admissions based on user research relating to privacy, consent, and (s)WAA.

Google’s arguments regarding surveys designed and presented by testifying experts have no application here. Even if they did, it is well established that arguments regarding the “[t]echnical unreliability” of an expert survey “go[] to [its] weight ... not its admissibility.” *Prudential Ins. Co. v. Gibraltar Fin. Corp.*, 694 F.2d 1150, 1156 (9th Cir. 1982). That includes arguments regarding the survey population. *See, e.g., Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1143 & n.8 (9th Cir. 1997) (affirming admission of expert survey even though it “was only conducted in Southern California”).¹ “Unlike novel scientific theories, a jury should be able to determine whether asserted technical deficiencies undermine a survey’s probative value.” *Id.* at 1143.

And those are the heightened standards applicable to *expert* surveys, which are not at issue here. This motion concerns documentation regarding surveys conducted in the ordinary course of Google’s business. Such documents “need not meet the evidentiary standards of expert testimony” in Rule 702. *Int’l Marine, L.L.C. v. Delta Towing, L.L.C.*, 2011 WL 890680, at *3 (E.D. La. Mar. 11, 2011); *see also Chase Fed. Sav. & Loan Ass’n v. Chase Manhattan Fin. Servs., Inc.*, 681 F. Supp. 771, 780 (S.D. Fla. 1987) (allowing ordinary-course survey into evidence even though “it might well [have been] excludable” had it “been conducted for the purpose of litigation,” for example because of a “failure to show that the survey universe was properly defined”).

¹ *See also, e.g., In re Pepperdine Univ. Tuition & Fees COVID-19 Refund Litig.*, 2023 WL 6373845, at *7 (C.D. Cal. Sept. 26, 2023) (C.D. Cal. Sept. 26, 2023) (denying motion to exclude expert survey that did not “survey[] actual Pepperdine students” because “[c]oncerns about how representative a survey population is do not preclude the survey’s admission”); *Cadena v. Am. Honda Motor Co.*, 2024 WL 4005097, at *6 (C.D. Cal. July 2, 2024) (denying motion to exclude expert survey despite an allegedly “improper survey population” because that “purported flaw[] go[es] only to the weight of the evidence and not its admissibility”); *Gunaratna v. Dennis Gross Cosmetology LLC*, 2023 WL 2628620, at *19 (C.D. Cal. Mar. 15, 2023) (denying motion to exclude expert survey because the “alleged flaws in [the] survey design (i.e., improper survey population [and other issues]) ... go only to the weight of the evidence and not the admissibility”); *Express, LLC v. Forever 21, Inc.*, 2010 WL 3489308, at *8 n.10 (C.D. Cal. Sept. 2, 2010) (“Courts ... have generally been reluctant to exclude survey evidence on the basis of purported methodological errors, especially alleged errors in the selection of sample demographics.”).

1 It makes sense to hold testimony of retained experts to a higher standard. Such witnesses
 2 speak with the authority of an “expert,” and if they are unscrupulous, there is a risk of influence
 3 from the litigation. These concerns do not apply to ordinary-course documents, and so the special
 4 reliability and fit requirements of Rule 702 do not apply either. *See Nestle Co. v. Chester’s Mkt.,*
 5 *Inc.*, 571 F. Supp. 763, 776 (D. Conn. 1983) (“[T]he same standard should not apply when
 6 admitting survey evidence developed before litigation as is applied to surveys developed for the
 7 purposes of litigation. The former are inherently more trustworthy, especially when the results are
 8 against the developer’s interest, as is the case here.”), *vacated on other grounds*, 609 F. Supp. 588
 9 (D. Conn. 1985). Google exclusively cites cases applying the *Daubert* framework, which is
 10 irrelevant here.²

11 The surveys and related documents at issue in this motion amply exceed comparatively
 12 lenient standards under Rule 403. Google’s two criticisms of its own surveys overlook important
 13 facts about those studies. And to the extent Google’s criticisms are valid, jurors can assign these
 14 documents lesser weight. *See Southland Sod Farms*, 108 F.3d at 1143 (“[A] jury should be able to
 15 determine whether asserted technical deficiencies undermine a survey’s probative value.”). There
 16 is no basis under Rule 403 to exclude this evidence from trial.

17 First, Google’s objection that these documents relate only to other geographies does not
 18 hold water. [REDACTED] See, e.g.,
 19 Santacana Ex. Q (PX-283) at -086 ([REDACTED])
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED] *BoDeans Cone Co.,*
 23 *L.L.C. v. Norse Dairy Sys., L.L.C.*, 678 F. Supp. 2d 883, 904 (N.D. Iowa 2009) (“[I]t is difficult
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25 ² *Citizens Fin. Grp. v. Citizens Nat’l Bank*, 383 F.3d 110, 118–19 (3d Cir. 2004) (expert survey);
 26 *Solofill, LLC v. Rivera*, 2018 WL 3357497, at *4 (C.D. Cal. May 16, 2018) (same); *1-800 Contacts,*
 27 *Inc. v. Lens.com, Inc.*, 2010 WL 5186393, at *4 (D. Utah Dec. 15, 2010) (same); *Citizens Fin.*
 28 *Grp. v. Citizens Nat’l Bank*, 2003 WL 24010950, at *5 (W.D. Pa. Apr. 23, 2003) (same); *Icon*
Enters. Int’l, Inc. v. Am. Prods. Co., 2004 WL 5644805, at *28 (C.D. Cal. Oct. 7, 2004) (same);
Lamphere Enters., Inc. v. Jiffy Lube Int’l Inc., 138 F. App’x 20, 23 (9th Cir. 2005) (same); *Elliot*
v. Google Inc., 45 F. Supp. 3d 1156, 1167 (D. Ariz. 2014) (same).

1 for the court to take seriously ‘trustworthiness’ challenges to a survey made by the very party that
 2 commissioned and use the survey in the first instance, albeit not for purposes of the present
 3 litigation.”). [REDACTED]

4 See Mao Ex. 9 (de Booij Tr.) at 110:24–111:22 (testifying that [REDACTED])
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]. See, e.g., Mao Ex. 16 (PX-326) at -980–81; see

8 *id.* at 031 ([REDACTED])
 9 [REDACTED]. In fact, [REDACTED]
 10 [REDACTED] See Mao

11 Ex. 17 at -311 (“[REDACTED]”); Mao Ex.
 12 16 (PX-326) at -031 (showing that [REDACTED]). It is no
 13 surprise that Google would [REDACTED]
 14 [REDACTED]
 15 [REDACTED] See, e.g., Mao Ex. 15 at -577–78, 583–84, 586; Mao Ex. 18 (PX-2)

16 at -000 (“[REDACTED]”).

17 The notion that studies of Google users who happen to live in other countries would have
 18 zero probative value with respect to users in the United States strains credulity. See *Thunder*
 19 *Studios*, 2018 WL 11346849, at *2 (“The evidence relating to Defendants’ actions in, or relating
 20 to, Australia, is relevant. ... While these actions are not close in geographic relation, it is difficult
 21 to ignore the connection between [the common course of conduct].”). The Court already rejected
 22 this argument in ordering the deposition of Mr. de Booij over Google’s objection that he was a
 23 “European” user experience researcher. See Dkt. 299 (order granting Mr. de Booij’s deposition);
 24 Dkt. 266 at 5 (objecting to his deposition in part on that basis).

25 Second, Google’s contention that these studies relate to a limited set of privacy-conscious
 26 users is both factually questionable and irrelevant. Google relies on its disclosure expert, Dr.
 27 Hoffman, to establish this fact. Mot. 4. Dr. Hoffman, in turn, relies on the deposition testimony of
 28 Mr. de Booij. See Dkt. 473-2 (Hoffman Rep.) at 91–92, tbl. 13. But immediately after Mr. de Booij

1 suggested that his hypothesis concerned *privacy-conscious* users' expectations of (s)WAA, he
 2 clarified that this "was an assumption," based on "no facts." Mao Ex. 9 (de Booi Tr.) at 102:3–
 3 103:13. Regardless, Google's contention is not a valid criticism. This case concerns privacy-
 4 conscious users: every class member chose to turn off the (s)WAA privacy control.

5 Google's remaining arguments are meritless. The Court's *Daubert* Order does not prohibit
 6 Prof. Schneier from testifying about these documents. See Dkt. 511 at 5–7. Prof. Schneier relies
 7 on this evidence to support his opinion that "Google employees repeatedly identified problems
 8 with Google's disclosures regarding WAA/sWAA, but Google ignored them," which the Court
 9 did not exclude. See Dkt. 474-4 (Schneier Rep.) at § 11.7, ¶ 398; Dkt. 511 at 5–7. Although Prof.
 10 Schneier may not be a consumer expectations expert, Dkt. 511 at 5–7, he may nonetheless rely on
 11 survey results to support his other opinions. One "does not need to be a survey expert" to "rel[y]
 12 on surveys produced by ... Defendant." *Boston Sci. Corp. v. Cook Med. LLC*, 2023 WL 1476573,
 13 at *12 (S.D. Ind. Feb. 2, 2023). The Order's reference to Paragraph 398, which cites some of the
 14 evidence at issue in this motion, appears to be a scrivener's error: the opinion the Court excluded
 15 begins with Paragraph 399. See Dkt. 511 at 6 (excluding the opinion that "Google Uses Dark
 16 Patterns to Manipulate User Behavior to Its Own Benefit, see Schneier Rep. ¶ 398–99"); Dkt. 474-
 17 4 (Schneier Rep.) at Dkt. 474-4 (Schneier Rep.) at § 11.8 ("Google Uses Dark Patterns to
 18 Manipulate User Behavior to Its Own Benefit," spanning ¶¶ 399–400).

19 Google's argument that Plaintiffs cannot establish the studies' methodology is false. Two
 20 of the exhibits themselves identify the studies' methodology. See Santacana Ex. P (PX-186), at -
 21 356–359 (providing information about "[p]articipants," "[r]esearch topics," and "[s]tudy setup");
 22 Santacana Ex. O (PX-14) at -697 (identifying study's "Goals & Method," including "[t]opics,"
 23 "[p]articipants," and "[p]rocedure"). It would not make sense to expect the other two exhibits to
 24 reflect a "methodology" because they concern Google's internal strategy, not survey results. See
 25 Santacana Ex. N (PX-9) at -299.R (Google's user researcher expected that [REDACTED]
 26 [REDACTED] Santacana Ex. Q
 27 (PX-283) at -069, -071 (describing "[t]he mission of the [REDACTED]" and Google's
 28

1 awareness that [REDACTED]
 2 [REDACTED]

3 Google fails to satisfy its burden under Rule 403. Google's research into users'
 4 expectations of the (s)WAA privacy controls is exceptionally powerful evidence. The mere fact
 5 that some of this research occurred outside of the United States does not render it prejudicial—and
 6 certainly not substantially more prejudicial than probative. Google itself relied on this research to
 7 understand its users worldwide, including in the United States. Google's made-for-litigation
 8 criticisms of its own research are not grounds for exclusion. Courts in the Ninth Circuit recognize
 9 that the jury can understand methodological criticisms of surveys and weigh their results
 10 accordingly. Google's motion should be denied.

11 **IV. CONCLUSION**

12 For these reasons, the Court should deny Google's fourth motion *in limine*, which seeks to
 13 exclude PX-9, PX-14, PX-186, and PX-283. The Court should not countenance Google's attempt
 14 to bury bad evidence, which shows just how long Google knew its users were misled.

15
 16
 17 Dated: July 10, 2025

Respectfully submitted,

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